

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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|---|---|------------------------------------|
| ----- | | X |
| AULISTAR MARK, HANCHEN LU and | : | |
| ANDREW HUDSON, Individually and on Behalf of | : | |
| All Others Similarly Situated, | : | |
| | : | |
| Plaintiffs, | : | Civil Action No. 1:13-cv-04347-AJN |
| -against- | : | |
| | : | |
| GAWKER MEDIA LLC, and NICK DENTON, | : | |
| | : | |
| Defendants. | : | |
| ----- | | X |

AFFIDAVIT OF STEPHEN TOTILO

STEPHEN TOTILO declares, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am of legal age and am competent to make this Declaration. I have personal knowledge of the facts sets forth in this Declaration, or I have learned said facts to speak on behalf of Gawker Media, LLC.

2. I am currently the Editor-In-Chief ("EIC") of Kotaku.com, Gawker Media, LLC's ("Gawker's") video gaming site. It is one of the most well-regarded and widely-read video game sites on the web. In May 2009, I left MTV to become Deputy Editor of Kotaku, and on January 1, 2012, I became EIC. I supervised Aulistar Mark during his internship at Kotaku.

3. I was the only New York-based Kotaku employee when I began working there. Prior to me coming on, most interns contributed remotely. Once I started, we would occasionally have an in-office intern, and sometimes we had remote interns. At other times, we had no interns at all.

4. We would only have interns when we had enough time and energy to devote to them, because it takes time to train and oversee them. Under Brian Crecente (former Kotaku EIC), we one to three interns at a time. Under Joel Johnson (another former Kotaku EIC), we may have had as many as four interns at time. Under my tenure, we had zero to two interns at a time.

5. There was no consistent cycle as to when we recruited interns. Whenever we determined that we had the time to properly train and oversee interns, we published posts on various online boards and on the Kotaku site asking for people to apply for internships. Brian would then collect and look over resumes.

6. It was not originally a requirement that the interns take the internship for college credit, but it was encouraged. Over the last couple of years though, when I was more involved with the intern program at Kotaku and was working under Joel, we tried to make sure the intern was in school and getting credit. There may have been unique instances where they were not in school, but we tried to recruit interns who were current college students.

7. The recruiting process was decentralized. I believe every potential intern was interviewed, but I do not recall if they were phone or in-person interviews.

8. We did not pay interns. We occasionally paid for some of their transportation costs. I recall that Joel paid out of pocket for subway tickets for them in 2011. In 2012, many applicants asked about compensation during their interviews, and we were sure to make it clear that the internship was not paid.

9. Kotaku did not require individuals to intern for any minimum number of hours. Aulistar interned for approximately thirteen weeks from late May to late August,

Monday, Wednesday, and Friday for six to seven hours per day. Aulistar requested to work from Monday, May 17, 2010 to Friday, August 20 Monday, Wednesday, and Friday for 20 hours per week and told me, "A total of 220 hours of work minimum is required to receive 6 credits from Eugene Lang (The New School) as well as receive financial aid to cover the cost of the credits." A true and correct copy of Aulistar's April 20, 2010 email making this request is attached hereto. After Aulistar started his Kotaku internship, he requested that I misrepresent that he worked on Tuesdays and Thursdays as well, in order to log the required hours for his school in the required timeframe. Aulistar represented that he needed me to make this misrepresentation so that he could obtain six credits or else "[he]'d lose [his] financial aid. A true and correct copy of Aulistar's June 16, 2010 making this request is attached hereto. I signed off on Aulistar's timesheets as requested.

10. There was no official orientation session for interns. Kotaku was disaggregated, and we were a virtual office since both the employees and the interns were often remote. I would conduct any formal training the interns received. The intern would have been my apprentice, watching me. They were physically sitting next to me at my desk and had the opportunity to shadow me. I would show them how to use Campfire (an internal chatroom program), GED (our publishing platform), and other basic tools, in a hands-on manner. We would try to have some interns overlap to train new interns in the basics, but I do not think that was always possible. Interns received more detailed training than employees. For example, employees did not shadow other employees and they were expected to have a higher level of researching, writing, and editing skills, so we did not spend nearly as much time with them on their posts.

11. Interns did a variety of low-level editorial tasks, including rewriting press releases, but they were rarely asked to perform any menial tasks. We wanted the interns to get a good introduction on how to find stories, craft headlines, write articles and publish them, and deal with the reaction from the public. Essentially, we wanted the interns to simply learn. Technically interns could put up a post they had written without my prior review, but I do not have any memory of them doing so. The editors always reviewed posts written by interns before publication. As a matter of course, the full-time employees are trusted to publish without review, but we enforced gatekeeping with interns to make sure their writing was properly edited.

12. I know that before I started at Kotaku, one intern was hired as Gawker employee, and some of my former interns were also hired as contributors. For example, I recall that one intern in 2011 was given a chance write a game club column as a freelancer for about a year. During his internship, that intern was very precocious and excited about the job, which is why we decided to hire him into a paid position.

13. I cannot remember what the specific climate was like at our company at the time, but we certainly set no expectation that we would hire him after the internship. He was still in school and was not considered a viable employee candidate.

14. Aulistar came to us unsolicited, rather than through the formal application process in response to a post on the Kotaku website. He interned in the New York office, and for a time he was the only New York intern.

15. I told him that I wanted him to have a goal of leaving the internship with at least one clip that was valuable to him and that he could be proud of. He was very excited about writing a Kotaku post about the Chinatown Arcade – he went down to

Chinatown to research many times. We collaborated on multiple drafts of that story, a process that involved me editing and providing suggestions and him rewriting and doing further research. I purposely dedicated significant time to helping him improve his writing because I wanted to be sure he learned from the experience.

16. Aulistar cited this story on his resume on his personal website www.aulistar.com,¹ but he incorrectly cited unique page-views on the article. I think he confuses that number with total page-views. This creates the impression that the article has reached more people than it actually has.

17. Since Aulistar was taking the internship for school credit, he asked me to complete both a midterm and final evaluation. In the evaluation, I said he was the best intern out of the three interns we had at that time. I also mentioned a few of his faults, for example, that the copy he wrote was a bit sloppy.

18. Aulistar was very good if we gave him one task at a time, but he had difficulty juggling multiple assignments. When he started putting together his Chinatown Arcade piece, he could not spend time on other things. He was someone who clearly was very new to the workplace. There were a lot of things for him to learn and master. He brought some great skills to the table, such as being diligent with paperwork, but other skills needed a lot of improvement.

19. I believe our interns got more out of their experience of being an intern than we got out of their contributions. We told the interns that they can learn a lot as an intern, and that they would definitely be able to go back to school with some good experience under their belt if they approached the experience with the right attitude. I

¹ As of December 5, 2013 the resume, mention of the article, and page views remained on the website. As of January 10, 2014, all content has been removed from www.aulistar.com

believe they did learn a great deal that cannot be taught in the classroom and which employees do not have the opportunity to learn. They received the chance to intern at Kotaku, one of the biggest sites related to video games. The interns spent time in the major leagues of video game blogs and also were by mentored by me, the EIC, directly, which is an extremely rare experience for interns. It is definitely a highly in-demand opportunity.

I declare under the penalty of perjury under the laws of the State of New York and the United States of America that the foregoing is true and correct.

Executed this 10th day of January, 2014 in New York, NY.



STEPHEN TOTILO

EXHIBIT A



Aulistar Mark <aulistar@gmail.com>

To: Stephen Totilo <stephentotilo@kotaku.com>

A total of 220 hours of work minimum is required to receive 6 credits from Eugene Lang (The New School) as well as receive financial aid to cover the cost of the credits [\$1200 each]

EXHIBIT B



Stephen Totilo <stephentotilo@kotaku.com>

Internship Guidelines

3 messages

Aulistar Mark <aulistar@gmail.com>

Wed, Jun 16, 2010 at 1:12 PM

To: Stephen Totilo <stephentotilo@kotaku.com>

The only major responsibility I have to place on you is simply signing your name on a digital PDF acceptance letter, Learning Agreement, (due June 28th) and monthly time sheets due (July 5th and August 9th) and a Mid Point Evaluation (due July 12th). As you are a busy man I'll be sure to remind you as these dates approach as the work load on my end is a bit more intense in regard to internship guidelines.

One issue is the start and end date being June 7th and August 9th. That's to say all time worked before and after these dates are up are technically not counted according the time sheets, and New School regulation.

Wanted to know if you wouldn't mind signing off on my timesheets saying I worked Tuesday and Thursday 10am to 5pm over the next couple weeks (note* you only have to sign the time sheet once for the month) to make up for hours spent in may and the end of August. It would really be a big help as I have to log 225 hours as I of course previously calculated, to obtain 6 credits which can't be lowered as I'd lose my financial aid. (note* 1 credit costs \$1200 so 2 credits = \$2400 etc.)

So again thank you for giving me an opportunity to work at Kotku/Gawker Media, and I hope having to sign these documents (I'll be e-mailing them to you automatically when I hit submit) won't be too intrusive.

Stephen Totilo <stephentotilo@kotaku.com>

Wed, Jun 16, 2010 at 2:17 PM

To: Aulistar Mark <aulistar@gmail.com>

Thanks. Doesn't look like this will be a problem. I'll be able to sort it out with you next week. Sorry again about your troubles this morning. I hope you're able to put it behind you, but I'm sure it'll be tough.

-Stephen

[Quoted text hidden]

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Stephen Totilo
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Cell phone: [646-246-9566](tel:646-246-9566)

Xbox Live: stephentotilo / PSN: stotil

Aulistar Mark <aulistar@gmail.com>

Wed, Jun 16, 2010 at 3:53 PM

To: Stephen Totilo <stephentotilo@kotaku.com>

Thanks for your concern I'll be fine

[Quoted text hidden]